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VIA EXPRESS MAIL NO.:

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To The Honorable Commissioner
of Patents and Trademarks
Washington, D.C. 20231

RECEIVED
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GROUP 3600

Re. U.S. Patent application 09/875,207 for "FLEXIBLE, ADJUSTABLE
SUPPORT APPARATUS"; Filed: June 6, 2001; Inventors: Dunay,
David; Furniss, James G.; Prokapus, Michael J. & Williams, John T. ;
Group Art Unit: 3632; Examiner: Wujciak, Alfred J.

LAW
BUSINESS
TECHNOLOGY

Dear Sir:

Enclosed please find the following:

1. One (1) Response to Notification of Non-Compliance mailed April 30, 2003 with One (1) Substitute Appeal Brief and three (3) copies of Appeal Brief (15 pages each) including APPENDIX A: Present Claims (4 pp).
2. Our post card. Please date stamp and return.

Please charge any unanticipated fees to our Deposit Account No. 03-3565 (a duplicate copy of this charge authorization is attached.)

Thank you for your cooperation and assistance.

Respectfully submitted,

Royal W. Craig
Reg. No. 34,145

I HEREBY CERTIFY that on May 16, 2003, one copy of the above-referenced documents were deposited with the United States Postal Service for delivery by Express Mail to the United States Patent and Trademark Office.



#15

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dunay et al.

Application No. 09/875,207 ✓

Group Art Unit: 3632

Filed: 6 June 2001

Examiner: Wujciak, Alfred J.

For: FLEXIBLE, ADJUSTABLE SUPPORT APPARATUS

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RESPONSE TO NOTIFICATION OF NON-COMPLIANCE

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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GROUP 3600

Sir:

In response to the notification of non-compliance dated 30 April 2003, the time to respond being 30 May 2003, applicant submits herewith its Substitute Appeal Brief which corrects the informalities noted by the Examiner in his advisory action.

Reconsideration is respectfully requested.

Respectfully submitted,

Royal W. Craig
Attorney for Appellant
Reg. No. 34,145

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dunay et al.

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* * * * *

SUBSTITUTE APPEAL BRIEF

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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Sir:

This is an Appeal from the final Official Action dated 9 August 2002 in which all pending claims in this case, claims 1-7 and 9-15 were finally rejected. No claims stand allowed.

REAL PARTY IN INTEREST

The real party in interest in the present case is Evesham Enterprises, LLC, P.O. Box 128
Magnolia, NJ 08049.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and/or interferences.

STATUS OF CLAIMS

Applicant conducted an interview with the Examiner and, with the Examiner's approval, filed an Amendment under Section 1.116 on December 9, 2002. Applicant has not heard back and can only assume that the proposed amendments were not entered.

Previously, on May 16, 2002, claim 8 was canceled and claims 1 and 7 were amended. Thus, claims 1-7 and 9-15 are pending in the application. Claims 2-6 depend from independent claim 1, claims 9-14 are intended to depend from claim 7, the two sets being directed to the same apparatus. Claim 15 is an independent method claim. The rejection of all of claims 1-7 and 9-15 is appealed. Please see Appendix A for a copy of the claims under Appeal.

STATUS OF AMENDMENTS

Despite Appellant's December 3, 2002 interview with the Examiner in which a proposed amendment was given and, at the urging of the Examiner, the subsequent filing of the 116 Amendment under Rule 1.116, the Appellant has not received an interview summary nor an advisory action. Thus, Appellant can only assume that the 116 Amendment was not entered.

SUMMARY OF INVENTION

The present invention is a plastic support strap for hanging duct work, pipes and the like. The duct support device is die cut from a plastic sheet. Specifically, a fastener portion is cut from the center of a rectangular strip, the fastener portion having a plurality of serrations formed along its length. With fastener portion removed, the remaining sides form a pair of support members running to an end by which the strap can be secured to an existing structure. The fastener portion is looped down and around and is engaged with the other end by its serrations. A primary advantage of the present invention (within its context of suspending flexible ductwork) is the ability to adjust the fixture without taking it apart. This feature is implemented by die-cutting the serrated fastener strip out from along the center of the blank, leaving two sturdy suspenders for encircling the pipe, and a fixture that is variable in diameter relative to a fixed point of suspension. The resulting "on-the-job" adjustment feature is especially helpful in the intended context because pipes tend to expand/contract and settle over time. This is to accommodate different sized pipes and ducts as well as to hang them at different elevations. The resulting "on-the-job" adjustment feature is especially helpful in the intended context because pipes tend to expand/contract and may settle over time.

SUMMARY OF PROSECUTION HISTORY

The Examiner issued a first Official Action dated 19 February 2002. Appellant filed an Amendment on 19 May 2002. The Examiner issued a second and final Official Action dated 9 August 2002. Appellant conducted an electronic mail interview (TDD communication) with the Examiner on December 3, 2002, and at that time forwarded a proposed amendment. The Examiner advised Appellant to formally file the Amendment under Rule 1.116, and this was done along with a notice of Appeal on December 9, 2002. Neither of an Advisory Action or Interview Summary have been received., the sole issues on appeal are the Examiner's rejection of claims 1-7 and 3, 5-7, 9 and 10 under 35 U.S.C. 103 as being obvious.

The current claims are as shown in the attached Appendix A.

ISSUES

- a. Whether claims 1-7 and 9-14 under 35 are unpatentable under U.S.C. 103(a) as being obvious over U.S. Patent No. 3,197,830 to Hoadley in view of U.S. Patent No. 4,477,950 to Cisek et al?
- b. Whether the Examiner's rejection of claim 15 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 3,197,830 to Hoadley in view of U.S. Patent No. 4,477,950 to Cisek et al. is improper?

GROUPING OF CLAIMS

As noted above, all claims have been rejected in view of a prior art combination which the appellant contests. In this regard, Petitioner hereby states that the rejected claims do not stand or fall together.

Claims 2-6 depend from independent claim 1, claims 9-14 are intended to depend from claim 7, the two sets being directed to the same apparatus. All of claims 1-6 and 9-14 stand or fall together.

Claim 15 is a method claim which stands on its own, despite being grouped with the apparatus claims in the Examiner's rejection. The Examiner's singular rejection was that "it would have been obvious to one skilled in the art" to modify the Hoadley apparatus to include a fastener portion having a plurality of serrations as taught by Cisek et al. However, this does not properly apply the method steps for hanging ductwork as recited in claim 15, including the steps of "*separating said strap into a pair of support members and a fastening portion characterized by a plurality of serrations...adjusting the length of said strap by pulling said fastening portion through said receiving means...engaging one of said plurality of serrations with said receiving means such that said desired length is fixed.*" Applicant maintains that *the method of using the present invention* is not necessarily rendered unpatentable by the structural combination of Hoadley and Cisek.

APPELLANTS' ARGUMENT

- a. The Examiner's rejection of claims 1-7 and 9-14 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 3,197,830 to Hoadley in view of U.S. Patent No. 4,477,950 to Cisek et al.

According to the Examiner, Hoadley shows a strap having a fastener portion 12 and serrations (apex d), support members (a & e) and a channel (b) formed in the strap, means 34 for attaching the strap to an existing structure, and an end (d) with means for lockingly engaging the serrations (slot 26). The Examiner acknowledges that Hoadley does not show a plurality of serrations along the fastener portion 12. That is because Hoadley was meant for binding electrical cords, and the fastener portion 12 of Hoadley is meant only for gripping a fixed-diameter cord. Nevertheless, the Examiner contends that "it would have been obvious to one skilled in the art" to modify the Hoadley apparatus to include a fastener portion having a plurality of serrations as taught by Cisek et al.

However, as stated in the specification a primary advantage of the present invention (within its context of suspending flexible ductwork) is the ability to adjust the fixture without taking it apart. This feature is implemented by die-cutting the serrated fastener strip (12) out from along the center of the blank out (along three sides), the serrated fastener strip (12) then being inserted into the receiver loop

(14). The center cut leaves two sturdy suspenders for encircling the pipe, and a fixture that is variable in diameter relative to a fixed point of suspension. The result is a sturdy support loop capable of suspending relatively heavy pipe and duct work, the support loop being of variable dimension and of variable height-adjustability. The resulting "on-the-job" adjustment feature is especially helpful in the intended context because pipes tend to expand/contract and settle over time.

Hoadley '952 shows a strap having a fastener portion 12 and serrations (apex d) for wrapping around an electrical cord. However, the strap is not intended to be hung or to suspend anything at all, let alone anything heavy, and it cannot be adjusted to a suspend at a variable height. The structure for this is clearly reflected in the claims. With specific regard to claims 1 and 7, Hoadley '952 does not have "*a fastener portion formed by cutting a central section in said strap with a plurality of serrations formed along the length of said fastener portion*", nor "*a pair of support members having a channel formed there between*".

The Examiner credits Cisek with these features¹, but there is no motivation or suggestion to combine the standard trash-bag type closure of Cisek with the cord binder of Hoadley. The two cited references serve entirely different purposes than the present invention, and neither of these purposes is in following that of the present invention, which is to be able to suspend pipes of different sizes and to

¹ The Examiner contends that "it would have been obvious to one skilled in the art" to modify the Hoadley apparatus to include a fastener portion having a plurality of serrations as taught by Cisek et al.

allow adjustment of their suspension level without taking the strap apart. To support a valid rejection under 35 U.S.C. 103 the cited art must suggest that it can accomplish the Applicant's results. Ex parte Tanaka, Marushima and Takahashi, 174 U.S.P.Q. 38 (Pat. Off. Bd. App. 1971). There simply is no motivation, teaching or suggestion to combine the serrations of Cisek along the fastener portion 12 of Hoadley. Even if the combination were made it still does not suggest the above-described fastener configuration² in the additional context of "a first end having means for attaching said strap to an existing structure" and "a second end having means for receiving and lockingly engaging said serrations of said fastener portion". (as recited in claims 1 and 7). Thus, both of claims 1 and 7 are patentably distinguished.

Claims 12 and 13 depend from claim 7 and incorporate by reference the same above-described limitations. Consequently, Applicant believes that claims 12 and 13 are also patentably distinct.

Claims 2-6 depend from claim 1 and incorporate by reference the same limitations. Additionally, claims 9-11 and 14 depend from claim 7 and incorporate by reference the same limitations. Consequently, Applicant believes that claims 2-6, 9-11, and 14 are also patentably distinct.

² "a fastener portion formed by cutting a central section in said strap with a plurality of serrations formed along the length of said fastener portion", nor "a pair of support members having a channel formed there between".

b. The Examiner's rejection of claim 15 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 3,197,830 to Hoadley in view of U.S. Patent No. 4,477,950 to Cisek et al. is improper.

Claim 15 is a method claim which stands on its own, despite being grouped with the apparatus claims in the Examiner's rejection. Applicant maintains that the method of using the present invention is not rendered unpatentable by the Hoadley and Cisek specification and claims.

Claim 15 recites "[a] method for hanging and supporting ducts or other devices from an existing structure comprising the steps of...*separating said strap into a pair of support members and a fastening portion characterized by a plurality of serrations*...adjusting the length of said strap by pulling said fastening portion through said receiving means...engaging one of said plurality of serrations with said receiving means such that said desired length is fixed."

As acknowledged by the Examiner, the elements of the Hoadley device (i.e. fastener portion (12) and pair of support members (reference letters "a" and "e" as added to Figure 2 by the Examiner)) that may be separated do not possess a plurality of serrations providing for an adjustable length loop formed when the fastener portion (12) is pulled through the matching aperture (18). It follows that the method of using the Hoadley device would necessarily omit the step of "separating said strap into a pair of support members and a fastening portion *characterized by a plurality of serrations*." Therefore, any loop formed by Hoadley's fastener portion (12) and pair of support members (Fig. 2, "a" and "e")

will possess a non-adjustable (i.e. fixed or pre-determined) length. On the other hand, Cisek is a standard trash bag tie with serrations, but it is not formed by tearing a serrated center strip from between opposing support members. Thus, Cisek cannot teach or suggest the step of "separating said strap into a pair of support members and a fastening portion characterized by a plurality of serrations" as recited in claim 15. Since neither of the cited references teach or suggest this step, the Examiner is apparently taking official notice that this step is obvious. However, the two cited references serve entirely different purposes than the present invention (neither attempts to suspend pipes of different sizes and to allow adjustment of their suspension level without taking the strap apart). The Examiner has cited nothing to support his proposition that the step of "separating said strap into a pair of support members and a fastening portion characterized by a plurality of serrations" (as recited in claim 15) is an obvious step along the way toward suspending pipes of different sizes and allowing adjustment of their suspension level without taking the strap apart. Indeed, this step is part and parcel to the operation of the proposed invention, and the cited prior art cannot achieve this step. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959), see M.P.E.P. 2143.01. Thus, the Examiner has failed to construct a proper prima facie case of obviousness with regard to claim 15.

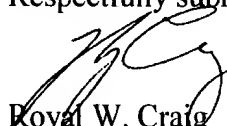
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Appln. of: Dunay et al.
Appln. No. 09/875,207
Group Art Unit: 3632
Page 11

For the reasons set forth herein, it is believed that this application clearly and patentably distinguishes over the prior art and is in proper condition for allowance.

Reversal is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RW Craig', is written over the printed name.

Royal W. Craig
Attorney for Appellant
Reg. No. 34,145

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APPENDIX A: Present Claims

1. A duct support device comprising:

a strap having:

- (i) a fastener portion formed by cutting a central section in said strap with a plurality of serrations formed along the length of said fastener portion;
- (ii) a pair of support members having a channel formed there between;
- (iii) a first end having means for attaching said strap to an existing structure; and
- (iv) a second end having means for receiving and lockingly engaging said serrations of said fastener portion;

whereby when said fastener portion is inserted through said receiving means of said second end of said strap, a support loop of variable dimension is formed by locking engagement between one of said plurality of serrations and said second end of said strap.

2. The device of claim 1, wherein said attaching means is an aperture for receiving a fastener therethrough.

3. The device of claim 2, wherein said means for receiving and engaging said serrations is a flap member.

4. The device of claim 3, wherein said fastener portion, said plurality of serrations, said pair of support members, said aperture and said flap are formed in said strap by die cutting.

5. The device of claim 1, wherein said strap is made from a flexible material.
6. The device of claim 5 wherein said flexible material is one from a group consisting of plastic, high density polyethylene, rubber, fiberglass, vinyl, PVC or aluminum.
7. An adjustable flexible strap for supporting and securing ducts, comprising a strap member having:
- (i) a fastener portion formed by cutting a central section in said strap member said fastener portion comprising a plurality of serrations formed along the length of said fastener portion;
 - (ii) a support portion;
 - (iii) a first end for attaching said strap member to an existing structure; and
 - (iv) a second end having an aperture for receiving and engaging said fastener portion;
- whereby when said fastener strap is inserted through said aperture a support loop of variable dimension is formed by said fastener portion and said support member for receiving said duct therein.
9. An adjustable flexible strap as recited in claim 8, wherein said plurality of serrations provides for adjustment of the length of said strap member.
10. An adjustable flexible strap as recited in claim 8 wherein said second end of said strap member further has a flap portion which lockingly engages one set of said plurality of serrations.

11. An adjustable flexible strap as recited in claim 10, wherein said fastener strap, said plurality of serrations, said support strap member, said aperture and said flap means are formed in said strap member by means of die cutting.

12. An adjustable flexible strap as recited in claim 7, wherein said strap is formed of a flexible material which is one of a group consisting of plastic, high density polyethylene, rubber, fiberglass, vinyl, PVC or aluminum.

13. An adjustable flexible strap as recited in claim 7, wherein said support member has channel formed along the central longitudinal axis thereof.

14. An adjustable flexible strap as recited in claim 10, wherein said strap is in the shape of an elongated rectangle.

15. A method for hanging and supporting ducts or other devices from an existing structure comprising the steps of.

attaching a strap to an existing support structure with a fastener;

separating said strap into a pair of support members and a fastening portion characterized by a plurality of serrations;

wrapping said pair of support straps around a bottom side of a section

of duct;

inserting one end of said fastening portion through a receiving means formed in an end of said strap member to form a support loop;

adjusting the length of said strap by pulling said fastening portion through said receiving means until the desired length is reached and such that said duct is secured within said support loop; and

engaging one of said plurality of serrations with said receiving means
such that said desired length is fixed.